

## Message Text

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ACTION PM-04

INFO OCT-01 EA-07 ISO-00 L-03 JUSE-00 INR-07 CIAE-00 EB-07

/029 W

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R 050420Z AUG 76  
FM AMCONSUL HONG KONG  
TO SECSTATE WASHDC 1496  
INFO SECDEF WASH DC  
CINCPAC  
DIA WASHDC  
AAFES DALLAS TEXAS  
CINCPACREPPHIL

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E.O. 11652: NA  
TAGS: ACLAM  
SUBJECT: ARMED SERVICES BOARD OF CONTRACT APPEALS CASE NO.  
18156

1. WE HAVE BEEN ADVISED INFORMALLY THAT THE ARMED SERVICES BOARD OF CONTRACT APPEALS INTENDS TO HOLD A HEARING IN HONG KONG SEP 76, TO ADJUSTICATE A CLAIM FILED AGAINST THE ARMY AND AIR FORCE EXCHANGE SERVICES (AAFES) BY JAMES S. LEE AND CO. INC, (U.S.A.) UNDER A 1971 AAFES CONTRACT TO ESTABLISH OUTLETS FOR THE SALE OF CUTSOMS-MADE CLOTHING AND MILITARY UNIFORMS AT DESIGNATED LOCATIONS IN SOUTH VIETNAM. CLAIM AMOUNTS TO US\$2.9 MILLION REPRESENTING AN ALLEGED TWELVE-MONTH SHORT FALL IN SALES ON THE BASIS THAT AAFES FAILED TO ACCURATELY ESTIMATE THE AMOUNT OF GROSS SALES THAT JAMES S. LEE INC. WOULD MAKE DURING THE LIFE OF THE CONTRACT.

2. BEST ESTIMATES OF PERSONNEL TO BE INVOLVED IN THE HONG KONG HEARING RANGE ABOUT THIRTY INCLUDING 8-10 AAFES PERSONNEL AS WITNESSES, DA JAG LAWYER, AAFES LAWYER, APPELLANT WITNESSES, APPELLANTS LAWYER JAMES J. GALLAGHER OF SELLERS, CONNER AND CUNEO,  
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1625 K STREEK, N.W. WASH DC 20006. AND ASBCA JUDGE AND STAFF.

3. WITH LARGE NUMBERS OF PARTICIPANTS EXPECTED FOR HEARING LOCAL PUBLIC INTEREST SHOULD BE ANTICIPATED. FURTHERMORE CLAIMANT, A HONG KONG CHINESE MERCHANT, WOULD STAND TO GAIN CONSIDERABLE LOCAL SYMPATHY IN SUIT AGAINST USG AND COULD BE EXPECTED TO GENERATE CONSIDERABLE PUBLICITY.

4. WHILE HKG ATTORNEY GENERAL'S OFFICE INTERPOSES NO TECHNICAL OBJECTION TO HOLDING OF AN ADMINISTRATIVE HEARING BY A DOD ADMINISTRATIVE JUDGE IN HONG KONG, WE ARE CONCERNED THAT PUBLICITY OF THE HEARING WOULD MOST PROBABLY BE EMBARRASSING TO THE U.S. ALLEGING, INTER ALIA, AN EXERCISE OF U.S. JUDICIAL AUTHORITY OR JURISDICTION IN HONG KONG.

5. LOCAL AUTHORITIES ARE STILL SENSITIVE TO ANY ACTIVITIES WHICH WOULD IMPLICATE HKG SUPPORT OF U.S. WAR EFFORT IN SOUTH-EAST ASIA. ON THESE GROUNDS UNDUE PUBLICITY GIVEN JAMES S. LEE ENTERPRISES IN VIETNAM COULD PROVE POLITICALLY EMBARRASSING TO BOTH HKG AND USG.

6. CONTRACT APPEAL HEARING COULD ALSO HAVE ADVERSE IMPACT UPON LARGE NUMBER OF OTHER FIXED PRICE-INDEFINITE QUANTITY DOD CONTRACTS AWARDED IN HONG KONG RANGING FROM TUG AND PILOTING SERVICES IN SUPPORT OF SEVENTH FLEET TO STEREO EQUIPMENT AND TAILORING AVAILABLE TO ALL USG EMPLOYEES IN CHINA FLEET CLUB. UNDER-RUNNING OF ANNUAL CONTRACT ESTIMATES OF BUSINESS VOLUME HAS BEEN REGULAR OVER PAST THREE YEARS DUE TO DECLINING MILITARY PRESENCE IN AREA, OPENING NEARLY ALL DOD CONTRACTS TO VENDOR CLAIMS ON SAME GROUNDS AS THE INSTANT JAMES S. LEE CLAIM. HEARINGS CONDUCTED IN US VENUE WOULD MINIMIZE ADVERSE HONG KONG IMPACT.

7. WHILE GOING INTO SUBSTANCE OF CASE OR MERITS OF LEE'S ALLEGATIONS, WE NEVERTHELESS FIND IT DIFFICULT TO UNDERSTAND HOW OR WHY SUCH A HEARING COULD BE CONTEMPLATED FOR HONG KONG AND PARTICULARLY AT APPARENTLY GREAT EXPENSE TO US TAXPAYER. CONTRACT WAS AWARDED TO AND CLAIM IS MADE BY COMPANY INCORPORATED IN US FOR BUSINESS ENTERPRISE IN VIETNAM. CLAIMANT IS REPRESENTED BY US ATTORNEY. ONLY RELEVANCE TO HONG KONG IS APPARENTLY CLAIMANT'S LOCAL RESIDENCE AND CITIZENSHIP. LIMITED OFFICIAL USE

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8. IN VIEW OF ABOVE CONSIDERATION REQUEST COORDINATION WITH DOD TO ENSURE DISAPPROVAL OF ANY PLANS BY ASBCA TO HOLD LEE CONTRACT APPEAL HEARING IN HONG KONG. CROSS

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## Message Attributes

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**Channel Indicators:** n/a  
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**Concepts:** CLAIMS, LITIGATION, CONTRACTS  
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**Copy:** SINGLE  
**Draft Date:** 05 AUG 1976  
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**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
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**Disposition Case Number:** n/a  
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**Subject:** ARMED SERVICES BOARD OF CONTRACT APPEALS CASE NO. 18156  
**TAGS:** ACLM, MILI, CGEN, HK, US  
**To:** STATE  
**Type:** TE  
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